

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-40146-RWZ

ROBERT McCAFFREY

v.

DAVID L. WINN

ORDER ON DEFENDANT'S MOTION FOR RECONSIDERATION

February 14, 2006

ZOBEL, D.J.

Plaintiff, a federal prisoner incarcerated at FMC Fort Devens, complains of inadequate medical care. The government moved to dismiss on the ground that plaintiff had failed to exhaust his administrative remedies as required by the Prisoner Litigation Reform Act, 42 U.S.C. § 1997e(a). The court denied the motion, but stayed the action until December 31, 2005, to allow plaintiff time to appeal to the appropriate prison authorities. The government apparently did not receive notice of the decision, nor has it received various letters filed by plaintiff.

Plaintiff has apparently tried to get relief administratively, but has failed to comply with all the particulars required of an appellant. The government seeks reconsideration on the ground that the PLRA requires exhaustion of the administrative process before the filing of a complaint and does not permit curing of the failure to do so thereafter. The government is correct. The statute does insist that administrative remedies be fully exhausted before the complaint is filed. I therefore have no choice

but to allow the motion to dismiss. Since plaintiff appears to be in ill health, I nonetheless request that defendant provide him with the regulations governing his situation and such assistance as he may need to satisfy the prerequisites to suit.

The motion for reconsideration is allowed and, on reconsideration, the motion to dismiss is allowed as well, without prejudice.

DATE

/s/ Rya W. Zobel

RYA W. ZOBEL

UNITED STATES DISTRICT JUDGE